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38 CFR Ch. I (7–1–08 Edition)

payable under the provisions of § 3.1000 of this chapter.

(Authority: 38 U.S.C. 5121)

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0695 and 2900–0698)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28388, July 11, 1990; 56 FR 20136, May 2, 1991; 56 FR 31332, July 10, 1991; 57 FR 15025, Apr. 24, 1992; 61 FR 26117, May 24, 1996; 62 FR 55761, Oct. 28, 1997; 64 FR 52652, Sept. 30, 1999; 68 FR 35180, June 12, 2003; 72 FR 16982, Apr. 5, 2007]

§ 21.7141 Tutorial assistance.

An individual who is otherwise eligible to receive benefits under the Montgomery GI Bill - Active Duty may receive supplemental monetary assistance to provide tutorial services. In determining whether VA will pay the individual this assistance, VA will apply the provisions of § 21.4236.

(Authority: 38 U.S.C. 3019, 3492)

[61 FR 26117, May 24, 1996]

§ 21.7142 Accelerated payments, payment of tuition assistance top-up, and licensing or certification test reimbursement.

(a) *Amount of accelerated payment.* An accelerated payment will be the lesser of—

(1) The amount equal to 60 percent of the charged tuition and fees for the term, quarter, or semester (or the entire program of education for those programs not offered on a term, quarter, or semester basis), or

(2) The aggregate amount of basic educational assistance to which the individual remains entitled under 38 U.S.C. chapter 30 at the time of the payment.

(Authority: 38 U.S.C. 3014A)

(b) *Amount of tuition assistance top-up.* The amount of tuition assistance top-up VA will pay to an individual for a course is the lowest of the following:

(1) All of the charges of the educational institution for the individual's education or training that the Secretary of the military department concerned has not paid under 10 U.S.C. 2007(a) or 2007(c);

(2) That portion of the charges of the educational institution for the individual's education that the Secretary of the military department concerned has not paid under 10 U.S.C. 2007(a) or 2007(c) and for which the individual has stated to VA that he or she wishes to receive payment;

(3) An amount VA will determine by multiplying the individual's remaining months and days of entitlement to educational assistance as provided under § 21.7072 or § 21.7073 by the individual's monthly rate of basic educational assistance as provided under § 21.7136 or § 21.7137, as appropriate;

(4) An amount VA will determine by multiplying the individual's remaining months and days of entitlement to tuition assistance top-up as provided under § 21.7075 by the individual's monthly rate of basic educational assistance as provided under § 21.7136 or § 21.7137, as appropriate; or

(5) An amount VA will determine by—

(i) Dividing the total number of days from the date on which the individual became eligible for educational assistance under the Montgomery GI Bill—Active Duty by the number of days in the term during which the individual took the course or course for which he or she wants tuition assistance top-up; and

(ii) Multiplying the result by the amount stated in paragraph (b)(1) or (b)(2) of this section, as appropriate.

(Authority: 38 U.S.C. 3014(b))

(c) *Amount of reimbursement for taking a licensing or certification test.* The amount of educational assistance VA will pay as reimbursement for taking an approved licensing or certification test is the lowest of the following:

(1) The fee that the licensing or certification organization offering the test charges for taking the test;

(2) \$2,000; or

(3) An amount VA will determine by multiplying the veteran's or servicemember's remaining months and days of entitlement to educational assistance as provided under § 21.7072 or § 21.7073 by the veteran's or servicemember's monthly rate of basic educational assistance as provided

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under §21.7136 or §21.7137, as appropriate.

(Authority: 38 U.S.C. 3032(f))

[72 FR 16982, Apr. 5, 2007, as amended at 72 FR 35662, June 29, 2007]

§21.7143 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.* An individual, entitled to educational assistance under 38 U.S.C. chapter 34, who establishes entitlement under 38 U.S.C. chapter 30, shall not be eligible to receive educational assistance under 38 U.S.C. chapter 30 before January 1, 1990. An individual who is entitled to educational assistance under 38 U.S.C. chapter 30 and any of the provisions of law listed in this paragraph must elect which benefit he or she will receive for the program of education he or she wishes to pursue. The provisions of law are:

- (1) 38 U.S.C. chapter 31,
- (2) 38 U.S.C. chapter 32,
- (3) 38 U.S.C. chapter 35,
- (4) 10 U.S.C. chapter 1606,
- (5) 10 U.S.C. chapter 107,
- (6) The Hostage Relief Act of 1980, (Pub. L. 96-499, 94 Stat. 1967-1974, and 5 U.S.C. 5561 note), and
- (7) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399, 100 Stat. 887-889 (10 U.S.C. 2181-2185)).

(Authority: 38 U.S.C. 3033, 3681)

(b) *Election of benefits.* The veteran must elect in writing which benefit he or she wishes to receive. The veteran may make a new election at any time, but may not elect more than once in a calendar month.

(Authority: 38 U.S.C. 3033; Pub. L. 98-525)

(c) *Nonduplication—Federal program.* Payment of educational assistance is prohibited to an otherwise eligible veteran or servicemember—

(1) For a unit course or courses which are being paid for entirely or partly by the Armed Forces during any period he or she is on active duty;

(2) For a unit course or courses which are being paid for entirely or partly by the Department of Health and Human Services during any period that he or

she is on active duty with the Public Health Service; or

(3) For a unit course or courses which are being paid for entirely or partly by the United States under the Government Employees' Training Act.

(Authority: 38 U.S.C. 3034, 3681)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28389, July 11, 1990; 57 FR 15025, Apr. 24, 1992; 58 FR 46867, Sept. 3, 1993; 61 FR 20729, May 8, 1996. Redesignated at 68 FR 35180.]

§21.7144 Overpayments.

(a) *Prevention of overpayments.* In administering benefits payable under 38 U.S.C. chapter 30, VA will apply the provisions of §21.4008. See §21.7133.

(Authority: 38 U.S.C. 3034, 3690(b))

(b) *Liability for overpayments.* (1) The amount of the overpayment of educational assistance paid to a veteran or servicemember constitutes a liability of that veteran or servicemember.

(2) The amount of the overpayment of educational assistance paid to a veteran or servicemember constitutes a liability of the educational institution if VA determines that the overpayment was made as the result of willful or negligent:

- (i) False certification by the educational institution; or
- (ii) Endorsement of a veteran's or servicemember's false certification of his or her actual attendance.

(Authority: 38 U.S.C. 3034, 3685)

(c) *Recovery of overpayments.* In determining whether an overpayment should be recovered from an educational institution, VA will apply the provisions of §21.4009 (except paragraph (a)(1)) to overpayments of educational assistance under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3034, 3685)

CROSS REFERENCE: *Entitlement charges.* See §21.7076(c).

[62 FR 55761, Oct. 28, 1997. Redesignated at 68 FR 35180, June 12, 2003.]